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Supreme Court of the United States

DONALD J. TRUMP, ET AL.,
Petitioners,

v.

STATE OF HAWAII, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Fourth and Ninth Circuits

BRIEF OF JANET A. NAPOLITANO AND OTHER FORMER FEDERAL IMMIGRATION OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

ARGUMENT 2

I. INDIVIDUAL THREAT ASSESSMENTS MANDATED BY CURRENT LAW PROTECT THE UNITED STATES MORE EFFECTIVELY THAN THE EXECUTIVE ORDER'S RELIANCE ON NATIONAL-ORIGIN DISCRIMINATION 4

A. Congress Has Sought to Eradicate National-Origin Discrimination from U.S. Immigration Laws 4

B. Congress Has Explicitly Directed the Executive Branch to Consider the Threat of Terrorism when Evaluating an Individual's Eligibility for Entry 7

C. The Executive Branch Has Developed Comprehensive and Effective Vetting Procedures to Make Individualized Admission Determinations 9

1. The Visa Applicant Vetting Process 12

2. The Refugee Vetting Process 15

3. Enforcement 18

II. THE EXECUTIVE ORDER'S RESORT TO NATIONAL-ORIGIN DISCRIMINATION DEPARTS FROM DECADES OF EXECUTIVE BRANCH PRACTICE 23

CONCLUSION **31**
APPENDIX **A-1**

TABLE OF AUTHORITIES

Page(s)

Cases

Graham v. *Richardson*, 403 U.S. 365 (1971) 30

Kerry v. *Din*, 135 S. Ct. 2128 (2015) 8

Korematsu v. *United States*, 323 U.S. 214 (1944) 5

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Schuette v. *BAMN*, 134 S. Ct. 1623 (2014) 29

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8 U.S.C. § 1152(a)(1) 6, 23

8 U.S.C. § 1153 6

8 U.S.C. § 1182(a)(3)(B) 7, 8, 23

8 U.S.C. § 1182(f) 23, 24, 27, 29

8 U.S.C. § 1185(a)(1) 23, 24, 27, 29

8 U.S.C. § 1187(a)(12) 9, 23

TABLE OF AUTHORITIES—Continued

Page(s)

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TABLE OF AUTHORITIES—Continued

Page(s)

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Page(s)

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TABLE OF AUTHORITIES—Continued

Page(s)

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S. Rep. No. 81-1515 (1950) 10

INTEREST OF AMICI CURIAE[1]

Amici have served in senior positions in the federal agencies charged with enforcement of U.S. immigration laws under both Democratic and Republican Administrations.

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[1] Pursuant to Supreme Court Rule 37.3(a), amici certify that all parties have consented to the filing of this brief. Pursuant to Rule 37.6, amici certify that no counsel for a party authored this brief in whole or in part, and no persons other than amici or their counsel made a monetary contribution to its preparation or submission.

Paul Virtue served as General Counsel of the U.S. Immigration and Naturalization Service ("INS") from 1998 to 1999. He also served as Executive Associate Commissioner from 1997 until 1998 and Deputy General Counsel from 1988 until 1997.

As former leaders of the nation's primary immigration enforcement agencies, amici are familiar with the historical underpinnings of the immigration laws' prohibition of national-origin discrimination and with the effectiveness of current procedures for vetting non-citizens wishing to enter the United States. In amici's experience, the most effective methods by which to secure our nation involve the use of individualized threat evaluations rather than group-based classifications. There is no basis, and until recently there had been no precedent, for denying entry to entire nationalities based on a supposition that their national origin alone makes them a threat to national security.

ARGUMENT

The Executive Order under review in this case, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017) (J.A. 1416) (the "Order"), is unwarranted and unprecedented. Never before has a President sought a blanket entry ban on all nationals from majority-Muslim nations based solely on the fear that *all* nationals of those countries are inherently dangerous.

The Order does not identify any specific threat based on intelligence, nor does it isolate any particular weaknesses in existing vetting procedures that would justify prohibiting the entire populations of these nations from entering the United States. Instead, the Order paints all nationals of six countries

with the broadest imaginable brush, stating that they "present heightened risks" to national security. Order § 1(e).

The Order's stated rationale is that "the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high" pending completion of "the assessment of current screening and vetting procedures required by section 2 of this order[.]" Order § 1(f). That rationale ignores the individualized assessments that already take place within robust vetting procedures established via Congress's legislative scheme and the Executive regime designed to implement it, and the Order does not identify which, if any, of the numerous procedures contained within that overarching scheme are suspected to be inadequate.

Even if certain procedures within the existing scheme might be improved, the Order's remedy is senseless: the Order relies upon national-origin-based classifications, rather than individual threat assessments, to predict future dangerousness, while leaving in place each and every one of the purportedly inadequate vetting procedures for every prospective applicant from countries except for those included in the Order. The obvious flaws inherent in such an approach explain why, until the issuance of this Order, both Republican and Democratic administrations had consistently relied upon targeted and individualized threat assessments, rather than group-based generalizations, to prevent our nation's immigration system from becoming a conduit for terrorists to enter the United States.

I. INDIVIDUAL THREAT ASSESSMENTS MANDATED BY CURRENT LAW PROTECT THE UNITED STATES MORE EFFECTIVELY THAN THE EXECUTIVE ORDER'S RELIANCE ON NATIONAL-ORIGIN DISCRIMINATION

A. Congress Has Sought to Eradicate National-Origin Discrimination from U.S. Immigration Laws

For much of our country's history, the immigration laws embodied ugly prejudices that regarded some nationalities as less desirable—and more dangerous—than others.

The Chinese Exclusion Act of 1882 was the first U.S. law significantly restricting immigration, suspending entry of "Chinese laborers" to the United States and barring any court from "admit[ting] Chinese to citizenship" based on fears that "the coming of Chinese laborers to this country endangers the good order[.]" Act of May 6, 1882, ch. 126, 22 Stat. 58. The Immigration Act of 1917 imposed further nationality-based immigration restrictions by barring admission to the United States by anyone born in what would become known as the Asiatic Barred Zone (generally consisting of most countries on the Asian continent). Pub L. 64-301, 39 Stat. 874. Not long thereafter, the Immigration Act of 1924 established the "first permanent quota law," imposing strict caps based on country of origin. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. Rev. 273, 279 & n.18 (1996) ("*Civil Rights Revolution*") (citing Pub L. 68-139, 43 Stat. 153).

Beginning in 1943, Congress began to roll back nationality-based immigration restrictions. *See, e.g.*, Act of Dec. 17, 1943, Pub. L. 78-199, 57 Stat. 600 (awarding China a minimum immigration quota and allowing Chinese nationals to become U.S. citizens). President Roosevelt, the State Department, and Members of Congress noted that these reforms served foreign policy objectives, namely, to strengthen the United States' relationship with China—a key ally during World War II—while countering Japan's anti-American propaganda campaign, which highlighted the United States' restrictionist immigration policies as evidence of its hostility to East Asian countries. *Civil Rights Revolution* at 282–86 & nn.36–47.[2]

The start of the Cold War compelled Congress to continue easing exclusionary policies based on national origin. Congress enacted the Immigration and Nationality Act ("INA") of 1952, which repealed the Asiatic Barred Zone, gave minimum quotas to all Asian nations, and eliminated racial bars on

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[2] The 1943 reforms were modest. China was given a "negligible" annual quota of only 105 immigrants. S. Rep. No. 78-535, at 6 (1943). Nationality-based prejudices continued intertwining with racial prejudices to influence immigration and national security policy, culminating in the forced internment of "all persons of Japanese ancestry" residing in California and in much of Washington and Oregon. *Korematsu* v. *United States*, 323 U.S. 214, 217, 227 (1944) (upholding application of an "exclusion order" pursuant to Executive Order 9066 resulting in the "imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States").

U.S. citizenship. Pub L. 82-414, 66 Stat. 163. The law's proponents "relied almost exclusively on the foreign policy benefit of reducing racial restrictions against Asians" as the United States sought to isolate the Soviet Union during the early years of the Cold War. *See Civil Rights Revolution* at 287. The House Judiciary Committee explained that the legislation would "have a favorable effect on our international relations, particularly in the Far East" where "American exclusion policy ha[d] long been resented[.]" H.R. Rep. No. 82-1365, at 28–29, *reprinted in* 1952 U.S.C.C.A.N. 1653.

The most significant shift from nationality-based stereotyping to individually-driven assessments occurred with Congress' passage of the Immigration and Nationality Act of 1965, which not only prohibited discrimination based on "nationality" in the "issuance of an immigrant visa," 8 U.S.C. § 1152(a)(1)(A), but also replaced the nationality-based quotas with a system that prioritized applicants based on their own individual skills and ties to U.S. citizens, *id.* § 1153. These reforms furthered two congressional aims: that "favoritism based on nationality will disappear[,]" and that "[f]avoritism based on individual worth and qualifications will take its place." 111 Cong. Rec. 24,226 (1965) (statement of Sen. Edward Kennedy); *accord* 111 Cong. Rec. 21,780 (1965) (statement of Rep. Arch Moore) ("[I]ntending immigrants must satisfy strict moral, mental, health, economic, and national security requirements. The law is long and detailed on the specific criteria to be applied in testing the qualifications of applicants.").

The INA established an "individualized adjudication process" in which "a visa applicant bears the

burden of showing that the applicant is eligible to receive a visa or other document for entry and is not inadmissible," and the Executive Branch determines whether to admit or deny entry to that individual based on the unique facts and circumstances of that person's application. J.A. 1203 (citing 8 U.S.C. § 1361).

B. Congress Has Explicitly Directed the Executive Branch to Consider the Threat of Terrorism when Evaluating an Individual's Eligibility for Entry

The Order's purported purpose, "to protect the Nation from terrorist activities by foreign nationals admitted to the United States," Order, preamble, ignores that Congress has already directed the Executive Branch to address the risk of terrorism through individualized eligibility determinations. Those existing individualized procedures are far more likely to be effective than resorting to group-based national origin classifications.

Congress began building a counter-terrorism framework within the federal immigration system in 1990, when it amended the INA to add 8 U.S.C. § 1182(a)(3)(B).[3] That statutory provision states that a person is "ineligible to receive visas and ineligible to be admitted to the United States" if certain criteria are present indicating that the person may

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[3] Before the 1990 Act, "there was no express terrorism-related ground for exclusion." Michael J. Garcia & Ruth E. Wasem, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens* at 3, Cong. Res. Serv. (Jan. 12, 2010), available at https://goo.gl/YtCcwg.

engage in acts of terrorism. Immigration Act of 1990, § 601, Pub. L. 101-649, 104 Stat. 4978.

In its current form, Section 1182(a)(3)(B) bars admission by anyone who has "engaged in a terrorist activity," is "likely to engage after entry in any terrorist activity," is a "member of a terrorist organization," has "received military-type training . . . from or on behalf of any" terrorist organization, or has "incited" terrorist activity, or who "endorses or espouses" or "persuades others to endorse or espouse" terrorist activity or to "support a terrorist organization[.]" 8 U.S.C. § 1182(a)(3)(B)(i). This statute directs Executive Branch officials to decide—on an individualized basis—whether any person seeking admission is likely to engage in terrorist activities, or has any history of committing or supporting terrorism. *See Kerry* v. *Din*, 135 S. Ct. 2128, 2140–41 (2015) (Kennedy, J., concurring) ("§ 1182(a)(3)(B) specifies discrete factual predicates the consular officer must find to exist" and requires "at least a facial connection to terrorist activity").

Congress has amended Section 1182(a)(3)(B) in response to changing circumstances since the statute's enactment nearly three decades ago. For example, in the aftermath of the September 11, 2001 attacks, Congress enacted the USA PATRIOT Act, § 411, Pub. L. 107-56, 115 Stat. 272 (2001), which amended § 1182(a)(3)(B) by expanding the definition of "terrorist organization" to include an organization that "engages" in terrorist "activities" or has been designated as such by the Secretary of State, even if it has not been designated as such under 8 U.S.C. § 1189. Congress further expanded and refined Section 1182(a)(3)(B)'s exclusionary criteria in 2005 to cover persons who provide a wider range of

assistance to terrorist organizations, such as fundraising, paramilitary training, and soliciting others to support the organization. REAL ID Act of 2005, Pub. L. 109-13, § 103, 119 Stat. 231.

More recently, Congress considered the precise problem that the Order purports to address: whether nationals from certain countries should be denied entry on the grounds that they present higher risks of engaging in terrorist attacks if admitted. Congress rejected that notion and instead concluded that those nationals should undergo individualized vetting. *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, tit. II, Pub. L. 114-113, 129 Stat. 2242 (codified at 8 U.S.C. § 1187(a)(12)) (restricting Iraqi and Syrian nationals' access to the tourist visa waiver program, thus requiring individualized assessments though existing vetting procedures). The Order, by contrast, would have immigration authorities adopt a crude presumption that *any* national of six predominantly Muslim countries is likely to engage in terrorist activity. Amici's experience is that the individualized assessments required by the existing statutory regime are far more effective at rooting out threats than the Order's sweeping use of national-origin discrimination.

C. The Executive Branch Has Developed Comprehensive and Effective Vetting Procedures to Make Individualized Admission Determinations

For nearly a century, the Executive Branch has promulgated rules and regulations to effectuate the policy objectives enshrined in federal immigration

legislation without resorting to national-origin discrimination.

In 1924, Congress passed legislation requiring any individual seeking admission to the United States to present certain documents prior to entry, and assigning consular officers the responsibility to approve or deny visas. *See* Immigration Act of 1924, Pub L. 68-139, 43 Stat. 153. Shortly before the passage of the INA in 1952, the Senate Judiciary Committee observed:

> [T]he Congress provided in the Immigration Act of 1924 for a double check of aliens by separate independent agencies of the Government, first by consular officers before the visas were issued, and by immigration officers after the aliens reached the port of entry. If a double check was essential 25 years ago to protect the United States against criminals or other undesirables, it is the opinion of the subcommittee that it is even more necessary in the present critical condition of the world to use the double check to screen aliens seeking to enter the United States.

S. Rep. No. 81-1515, at 327 (1950). The concept of a "double check" prevailed when Congress passed the INA, which remains the statutory basis for the individualized, risk-based screening of visa applicants. Ruth E. Wasem, *Visa Security Policy: Roles of the Departments of State and Homeland Security* at 3, Cong. Res. Serv. (June 30, 2011), available at https://goo.gl/WqC8Th ("*Visa Security Policy*").

In the years following the attacks of September 11, 2001, the two-tiered screening process has evolved into a robust and multi-layered system of individualized vetting procedures to screen immigrants for potential admission. Letter from J. Napolitano & M. Chertoff to B. Obama (Nov. 19, 2015), available at https://goo.gl/P7bPA5, *quoted in* 161 Cong. Rec. H8385 (daily ed. Nov. 19, 2015) ("*Napolitano Letter*"); *see also Statement for the Record Before the U.S. H.R. Comm. on Homeland Sec. Regarding "Shutting Down Terrorist Pathways Into America"*, 114th Cong., 2d Sess. (Sept. 14, 2016), available at https://goo.gl/pbwq16 (statement of Leon Rodriguez and others) ("*Terrorist Pathways Statement*"); Ron Nixon & Jasmine C. Lee, *Getting a Visa to Visit the U.S. Is a Long and Extensive Process for Most*, N.Y. Times (Mar. 16, 2017). Drawing on data collected and shared by the State Department, DHS, the National Counterterrorism Center, the FBI, the Defense Department, and local and international partners, the vetting system comprehensively investigates each visa and refugee applicant through a series of interview-based, biographical, and biometric checks that extend over many months, even after an applicant's admission. *Napolitano Letter*; *Terrorist Pathways Statement*. This tailored and thorough review ensures that each applicant is clear of the concerns enumerated as grounds for inadmissibility in Section 1182(a), including concerns related to security and terrorism. *See Visa Security Policy* at 3, 7; *see also, e.g.*, USCIS Policy Manual, ch. 8 (current as of Aug. 23, 2017), available at https://goo.gl/Nbs8zK (detailing Section 1182(a) grounds for inadmissibility).

1. The Visa Applicant Vetting Process

The visa vetting process begins with an online application, which allows consular, intelligence, and law enforcement personnel to analyze and share data in advance of the applicant's interview. *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs* at 2, 114th Cong., 2d Sess. (Mar. 15, 2016) (statement of David Donahue), available at https://goo.gl/qaRwQD ("*Donahue Statement*"); Michael J. Garcia & Ruth E. Wasem, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens* at 14–16, Cong. Res. Serv. (Jan. 12, 2010), available at https://goo.gl/YtCcwg ("*Terrorist Grounds*"). During the interview, consular officers investigate case-relevant information regarding the applicant's identity, qualifications for the particular visa category, and possible ineligibilities due to criminal history, prior visa applications, or travel to the United States, and potential security threats. *Donahue Statement* at 3; *Terrorist Grounds* at 14. A visa applicant's data is also reviewed through specific electronic databases set up by the State Department, which contain tens of millions of visa records, in order to detect and respond to any derogatory information regarding the applicant. *Donahue Statement* at 3; *Terrorist Grounds* at 14.

Additionally, nearly all visa applicants submit to a 10-print fingerprint scan that is screened against two primary databases: (1) DHS's IDENT database, which contains available fingerprints of known and suspected terrorists, wanted persons, and those who have committed immigration violations, and (2) the FBI's Next Generation Identification ("NGI") system, which contains more than 75.5

million criminal history records. *Donahue Statement* at 3; *Terrorist Grounds* at 17–18. All visa photos are also compared to a gallery of photos of known or suspected terrorists obtained from the FBI as well as the State Department's repository of all visa applicant photos. *Donahue Statement* at 4; *Terrorist Grounds* at 14.

Visa applicants are further vetted through various interagency systems using pooled data from law enforcement and intelligence sources. DHS's Preadjudicated Threat Recognition and Intelligence Operations Team ("PATRIOT") and Visa Security Program ("VSP") provide another level of review of visa applications at overseas locations. *Donahue Statement* at 4. Using resources from DHS Immigration and Customs Enforcement ("ICE"), CBP, and the State Department, PATRIOT reviews applications to identify national security, public safety, and other eligibility concerns before a visa is granted. Part of this review consists of manual vetting by a team of agents, officers, and analysts from ICE and CBP if an application presents potential derogatory information. *Id.* at 4–5; *Terrorist Pathways Statement*. Similarly, the VSP deploys DHS officers to diplomatic posts to provide additional visa security services in order to identify terrorists, criminals, and others who are ineligible for visas before they apply for admission or travel to the United States. *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs* at 3, 114th Cong., 2d Sess. (Mar. 15, 2016) (statement of Sarah R. Saldaña), available at https://goo.gl/Ur169i ("*Saldaña Statement*").

The VSP does not simply deny visas: it works collaboratively with other U.S. agencies and overseas law enforcement to identify previously unknown threats and bolster existing security data. In Fiscal Year ("FY") 2015, VSP reviewed over two million visa applications, contributing to the refusal of approximately 8,600 visa applications. *See Terrorist Pathways Statement*. Over 2,200 of these refusals presented a known or suspected connection to terrorism or terrorist organizations. *See id.*

In 2013, the State Department worked with interagency partners to launch the Kingfisher Expansion counterterrorism visa vetting system ("KFE"), which provides yet another layer of interagency review. *Donahue Statement* at 4. KFE first compares multiple fields of data extracted from visa applications against intelligence community and law enforcement agency databases in order to identify terrorism and security concerns. *Id.* KFE then provides an additional level of interagency evaluation for any applicant presenting a security concern. This second-level review must resolve all concerns in order for the applicant to be found eligible for a visa. *Id.*; *see* Jerome P. Bjelopera *et al.*, *The Terrorist Screening Database and Preventing Terrorist Travel* at 13, Cong. Res. Serv. (Nov. 7, 2016), available at https://goo.gl/JcRVW4.

The government's vetting efforts continue during and after an approved applicant's travel to the United States. If at some point a visa holder matches derogatory information in a government database, DHS and DOS collaborate to determine whether the information warrants visa revocation. *Saldaña Statement* at 6–7.

The Order asserts that "conditions" in the six targeted countries are such that those countries' governments have "diminishe[d] . . . willingness or ability to share or validate important information about individuals seeking to travel to the United States." Order §1(d). To the extent that assertion is true, existing law and procedure already address it: at all points during the vetting process, the visa applicant bears the burden of producing documents and information substantiating that he is eligible for a visa and that he does not trigger any of the enumerated criteria for inadmissibility. 8 U.S.C. § 1361. Thus, where the government lacks the information necessary to determine whether an applicant is eligible for a visa, existing procedures do not permit the visa to be granted.

2. The Refugee Vetting Process

The Order not only suspends entry by individuals from six predominantly Muslim nations, it further suspends entirely the United States Refugee Admissions Program ("URAP"), participants of which already undergo extensive individualized vetting.

The United States sets its refugee profile by specifying that it is willing to admit to the country as refugees the world's most vulnerable individuals, including mother-led family units, victims of torture, and those with severe medical conditions. *See Napolitano Letter*. These refugees receive "the highest level of scrutiny from a law enforcement and national security perspective." *Id.*; *accord* Natasha Hall, *Refugees Are Already Vigorously Vetted*, Wash. Post (Feb. 1, 2017); *see also* Haeyoun Park & Larry Buchanan, *Refugees Entering the U.S. Al-*

ready Face A Rigorous Vetting Process, N.Y. Times (Jan. 29, 2017) ("*Rigorous Vetting Process*") (detailing the twenty steps a refugee must undertake before entering the United States); David Inserra, *How the Refugee Vetting Process Works*, Heritage Foundation (Dec. 21, 2015), available at https://goo.gl/PtSXYs ("*Refugee Vetting*") (listing various agency databases and multiple checkpoints in vetting process).

The refugee vetting process is "lengthy and deliberate," extending between 18 to 24 months and offering no possibility to waive applicable requirements. *See Napolitano Letter*. The prospective refugee begins the screening process by first registering and interviewing with the United Nations, which decides whether the individual fits the definition of a refugee and whether to refer that individual to the United States or elsewhere for resettlement. *Rigorous Vetting Process*.

If the applicant is referred for resettlement in the United States, he or she must interview with the State Department and proceed through several biographical and biometric screenings. *Rigorous Vetting Process*; *Terrorist Pathways Statement*. Specially-trained USCIS officers conduct an in-person interview of every principal refugee applicant and every accompanying family member age 14 or older in order to identify any possible grounds of ineligibility. *Hearing on the Crisis of Confidence: Preventing Terrorist Infiltration through U.S. Refugee and Visa Programs before the House Comm. on Homeland Sec.*, 114th Cong., 2d Sess. (Feb. 3, 2016) (statement of Leon Rodriguez), available at https://goo.gl/wzj8cq ("*Rodriguez Statement*"). The officers evaluate the credibility of each applicant

and assess, among other things, whether his testimony is consistent with known country conditions. *Id.*

A refugee applicant's biographic and biometric information is assessed against a broad array of databases from various law enforcement and intelligence agencies to help confirm the applicant's identity, check for any criminal or other derogatory information, and identify information that may inform interview questions and potentially lead to additional, higher-level review. *See Refugee Vetting* (listing databases). These databases include the State Department's Consular Lookout and Support System ("CLASS"), which includes watchlist information, and the National Counterterrorism Center's Interagency Checks ("IACs"). *See Rodriguez Statement.* These checks are recurring, so any derogatory information that is identified following the initial check but before the applicant has traveled to the United States will be shared with USCIS. *Id.*

USCIS also conducts biometric checks by assessing fingerprints and photographs against three sets of data, including the FBI's NGI system, DHS's IDENT, and the Defense Department's Automated Biometric Identification System ("ABIS"). *See Rodriguez Statement.* IDENT screens fingerprints against information from watchlists and previous immigration encounters in the United States and overseas, including prior visa applications. *Id.* ABIS contains a variety of records, including fingerprint records captured in theatre in Iraq. *See id.*

Refugee applicants are also subject to a mandatory supervisory review before a final decision on their applications. Certain categories of sensitive

cases, such as certain national security-related cases, must be referred to USCIS's Refugee Affairs Division Headquarters for additional research, information-sharing with law enforcement and intelligence agencies, or consultation with an outside expert before a final decision. *See Rodriguez Statement.*

Like visa applicants, refugees bear the burden of producing documents and information substantiating that they are eligible for refugee status and that they do not satisfy any inadmissibility criteria. 8 U.S.C. § 1361. If documents or information are unavailable to establish the applicant's eligibility, the application is denied.

3. Enforcement

The available evidence demonstrates that vetting officers vigorously enforce the heavy burden of proof placed upon visa applicants by assessing each applicant's eligibility and risk on a targeted, individualized basis. The evidence also confirms that although existing vetting procedures already address the purportedly-relevant "conditions" in the six designated countries, Order § 1(e), insofar as nationals from the six designated are refused entry into the United States at relatively high rates, the Order fails to meet its own rationale because it does not suspend entry from countries with even higher refusal rates.

According to State Department data that calculates on a per-country basis the percentage of applicants for U.S. temporary visas who were refused entry, in fiscal year 2016, eighteen countries had adjusted refusal rates above 60% for applicants for B visas, which are nonimmigrant visas issued to

persons who wish to enter the United States temporarily for business or pleasure. *See* Table 1, *infra*. Only one of these countries—Somalia—is designated under the Order, and its refusal rate is still lower than those of ten other countries. *Id.*

Table 1. B Visa Adjusted Refusal Rates by Nationality.[4]

Country	FY 2016 Adjusted Refusal Rate
Cuba	82%
Afghanistan	74%
Guinea-Bissau	72%
Mauritania	72%
Liberia	70%
Gambia	70%
Bhutan	70%
Ghana	66%
Burkina Faso	65%
Haiti	65%
Somalia	64%
Guinea	64%
Bangladesh	63%

[4] Adjusted refusal rates are taken from U.S. Dep't of State, *Calculation of the Adjusted Visa Refusal Rate for Tourist and Business Travelers Under the Guidelines of the Visa Waiver Program*, tbl. FY2016, available at https://goo.gl/dSW5aa and https://goo.gl/7pjQrQ (last visited Sept. 13, 2017) ("*Visa Refusal Rates*"), and rounded to the nearest whole number. The shaded cell in Table 1, *infra* indicates one of the six countries designated under the Order.

Georgia	63%
Vatican City	63%
Laos	62%
Burundi	61%
Sierra Leone	61%

Among the designated countries, the adjusted refusal rates for B visa applicants were relatively high: about 36 percent to 137 percent higher than the average refusal rates of B visa applicants from all other countries. *See* Table 2, *infra*. In fact, the majority of applicants in two countries—Somalia and Syria—were refused entry. *Id.*

Table 2. B Visa Adjusted Refusal Rates by Nationality.[5]

Country	FY 2016 Adjusted Refusal Rate	Percentage Higher than Non-Designated Countries' Average Refusal Rate (27%)
Iran	45%	67% higher
Libya	41%	50% higher
Somalia	64%	137% higher
Sudan	37%	36% higher
Syria	60%	121% higher
Yemen	49%	81% higher
Average	***49%***	***81% higher***

Common reasons for visa refusals include a lack of information proving eligibility, inability to qualify for the particular visa category, or evidence

[5] Calculations based on *Visa Refusal Rates*.

showing inadmissibility under the INA's specified grounds. *See* U.S. Dep't of State, *Visa Denials*, available at https://goo.gl/undMvW (last visited Sept. 13, 2017). In amici's experience, the relatively high refusal rates for applicants from the designated countries reflects that the consular and immigration officers are conducting case-specific inquiries appropriately, as mandated by the INA. Further, even if high refusal rates suggested a disproportionate "risk" associated with applicants or applications from particular countries, the Order fails to target *any* of the highest-risk countries by that measurement. *See* Table 1, *supra*.

There is no evidence whatsoever that individual applicants from the six designated countries present a heightened security risk vis-à-vis individuals from other countries, such as those listed in Table 1, much less a risk that the existing vetting system is incapable of handling.

Nationals from the six countries identified in the Order have killed no Americans in terrorist attacks on U.S. soil between 1975 and 2015. Alex Nowrasteh, *Guide to Trump's Executive Order to Limit Migration for "National Security" Reasons*, Cato at Liberty (Jan. 26, 2017), available at https://goo.gl/18jW5T. Multiple studies show that the overwhelming majority of individuals who were charged with or who died while perpetrating terrorism-related crimes inside the United States since September 11, 2001 have been U.S. citizens or legal permanent residents—not refugees or non-immigrant visa-holders. *See* Peter Bergen *et al.*, *Who Are the Terrorists?*, New Am. Found., available at https://goo.gl/kEDnBt (last accessed Sept. 13, 2017) ("*Who Are the Terrorists*"); *see also* Phil

Hirschkorn, *Most Convicted Terrorists Are U.S. Citizens. Why Does the White House Say Otherwise?*, PBS NewsHour (Mar. 12, 2017), available at https://goo.gl/zCXq1N (citing five studies supporting the conclusion that "the vast majority of terrorism convictions are against U.S. citizens, as opposed to immigrants"). In fact, every perpetrator of a lethal terrorist attack on U.S. soil in the name of Islam during this time period was a U.S. citizen or permanent resident. *See Who Are the Terrorists.*

The empirical evidence available demonstrates that national origin is an exceedingly poor proxy for security risk. Since September 11, 2001, thirteen terrorists have committed deadly domestic attacks in the name of Islam. *See Who Are the Terrorists.* Most of the perpetrators of these attacks were U.S. citizens, and their countries of birth exhibited no discernible pattern: eight from the United States, and one each from Russia, Kyrgyztan, Egypt, Kuwait, and Pakistan. *See id.* Omar Mateen, who was born in New York to Afghan parents, was responsible for 49 of the 94 total deaths in those attacks. Kurtis Lee, *Islamist Terrorists Have Struck the U.S. 10 Times Since 9/11. This Is Where They Were Born*, L.A. Times (Feb. 7, 2017 2:36 p.m.), available at https://goo.gl/hmPvxt. Tashfeen Malik, a Pakistani woman, and her husband, Syed Rizwan Farook, who was born in the United States, were responsible for fourteen deaths. *Id.*; Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis* at 12, CATO Institute (Sept. 13, 2016), available at https://goo.gl/ZgEAux.

By any measure, neither visa/refugee status nor nationality bears any relationship to security risk, and certainly not enough of a relationship to sup-

port a generalized entry ban. Moreover, as noted above, several provisions of the INA are already aimed at the threat that the Order purports to address. By prohibiting national-origin discrimination in Section 1152(a) while requiring exclusion of aliens on individualized security and terrorism-related grounds in Section 1182(a)(3) and exempting those present in certain countries of concern from the visa waiver program in Section 1187(a)(12), the immigration laws reflect Congress's judgment that the multiple checks of our individualized visa and refugee vetting system are a more effective means of addressing security risks than national-origin discrimination. *See, e.g.*, Br. of Former National Security Officials, *Hawaii* v. *Trump*, No. 17-15589 (9th Cir. Apr. 20, 2017) (ECF No. 108); Decl. of Albright *et al.*, *Aziz* v. *Trump*, No. 1:17cv116 (E.D. Va. Feb. 8, 2017) (ECF No. 57).

II. THE EXECUTIVE ORDER'S RESORT TO NATIONAL-ORIGIN DISCRIMINATION DEPARTS FROM DECADES OF EXECUTIVE BRANCH PRACTICE

The sensibility and proven efficacy of approaching the vetting of visa applications with individualized, rather than group-based, threat assessments help explain why no previous administration has attempted to invoke statutory suspension authorities to ban entire nationalities of applicants based on perceived dangerousness. Contrary to the Government's assertion, the Order is not justified by either "history" or Sections 1182(f) and 1185(a)(1). Pet. Br. at 53. In the wake of numerous national security crises, including the attacks of September 11, 2001, no prior President has invoked Section

1182(f) or Section 1185(a)(1) in the manner they are invoked in the Order.

In the rare occasions in which Section 1182(f) or Section 1185(a)(1) has been invoked, entry was suspended based on criteria other than national origin, such as affiliation as a foreign government agent or prior harmful conduct involving human rights abuses or impeding peace or democracy—in effect, to deny entry as a sanction designed to respond to specifically-identified conduct. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* at 6–10 tbl.1, Cong. Res. Serv. (Jan. 23, 2017), available at https://goo.gl/jj3cRi (collecting proclamations and orders invoking § 1182(f)).[6]

The Government argues that a number of previous Executive actions provide legal and historical precedent for the Order, but none of those examples supports the Order's use of nationality as a proxy for dangerousness.

The Government's reliance on President Carter's invocation of Section 1185(a) during the Iran hostage crisis (Pet. Br. at 53) is misplaced. In response to the storming and seizure of the U.S. Embassy in Tehran, and the taking of more than fifty American hostages, President Carter delegated authority to the Secretary of State and the Attorney General "in respect of Iranians . . . to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States." Exec. Order No. 12172, 44 Fed. Reg. 67,947

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[6] An Appendix to this brief reproduces the substance of Table 1 in this Congressional Research Service report that lists prior presidential invocations of § 1182(f).

(Nov. 26, 1979); *see* Exec. Order No. 12206, 45 Fed. Reg. 24,101 (Apr. 7, 1980) (expanding this authority "by deleting 'holding immigrant visas'" as a limitation). Although President Carter's announcement might be read as suggesting that all entry by Iranian nationals would be suspended,[7] the regulations promulgated pursuant to President Carter's executive orders did not enact such a blanket suspension. Rather, the State Department required visas issued to Iranian nationals before the April 7, 1980 Executive Order to be re-endorsed by a U.S. consular officer under new guidelines,[8] and the INS shortened the time period in which Iranian nationals who were *unlawfully* present in the United States could depart voluntarily.[9]

President Carter's Executive Orders were unlike the Order in that they were a direct response to an armed takeover of the U.S. Embassy in Tehran, the capture and holding hostage of American Embassy

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[7] *Sanctions Against Iran Remarks Announcing U.S. Actions* (Apr. 7, 1980), available at https://goo.gl/ozpkMo ("*Iran Remarks*").

[8] *See* 45 Fed. Reg. 24,436 (Apr. 9, 1980) (promulgating 22 C.F.R. § 46.8, later repealed, which provided in pertinent part: "An immigrant or nonimmigrant visa, . . . issued prior to April 7, 1980, to a national of Iran shall not be valid . . . unless such visa shall have been presented to a consular officer on or after April 7, 1980, and the consular officer shall have endorsed the visa in the manner prescribed by the Department of State.")).

[9] *See* 45 Fed. Reg. 27,917 (Apr. 25, 1980) (amending 6 C.F.R. § 242.5(a)(2)); *see also Nademi* v. *INS*, 679 F.2d 811, 814 (10th Cir. 1982) ("The amendment does no more than implement the President's foreign policy of severing relations with Iran.").

personnel, and the Iranian Government's refusal to "to take custody of the American hostages." *Iran Remarks*. A decision to suspend the issuance of visas from a country in response to the storming and capture of the U.S. Embassy does not amount to national-origin discrimination. As described above, consular officials at U.S. embassies help receive and process applications for visas, and they perform critical investigative and vetting functions. *See, e.g.*, *Visa Security Policy* at 1. The inability to perform such tasks during heightened tension between two countries is a justification for the exercise of extraordinary Executive authorities that is distinct from any assumption about an individual applicant's likely or potential dangerousness. Further unlike the Order here, President Carter's announced restrictions were only one of many sanctions proposed in order to increase political pressure on the Iranian Government to ensure the return of the hostages to the United States.

The Government also errs in its reliance on President Reagan's 1981 proclamation directed at attempted undocumented entry from the high seas. *See* Proc. No. 4865, 46 Fed. Reg. 48,107 (Sept. 29, 1981); *accord* Exec. Order No. 12,807, 57 Fed. Reg. 23,133 (May 24, 1992) (implementing this interdiction policy). While President Reagan's proclamation did not facially impose nationality-based restrictions, it was widely understood to have been directed at undocumented "Haitian migrants" attempting to enter the United States by sea, as this Court later recognized in *Sale* v. *Haitian Centers Council, Inc.*, 509 U.S. 155, 187–88 (1993). Yet the proclamation did not bar anyone that otherwise would have been admissible, nor did it reflect any

prejudicial judgment on the inherent characteristics of the Haitian nationals seeking admission. The proclamation instead simply reiterated that certain migrants were inadmissible under existing law, and it implemented agreements between the United States and foreign governments that permitted U.S. interdiction of vessels carrying undocumented migrants and allowed the U.S. to return those migrants to their countries of origin.

Only once before President Trump took office had a President invoked Section 1182(f) or Section 1185(a)(1) to suspend entry into the United States based on nationality. Proc. No. 5517, 51 Fed. Reg. 30,470 (Aug. 22, 1986). But even in that *sui generis* case, national origin was deployed not to discriminate invidiously against a particular race or group, but rather as a foreign policy countermeasure against a nation that had disrupted migration to and from the United States in violation of that nation's bilateral diplomatic agreement with the United States. In that case, President Reagan suspended entry of Cuban nationals in response to Cuba's own decision "to suspend all types of procedures regarding . . . the December 14, 1984 immigration agreement between the United States and Cuba" as well as to Cuba's "failure . . . to resume normal migration procedures with the United States[.]" 51 Fed. Reg. at 30,470. The proclamation provided for the suspension to be lifted when the Cuban government complied with the agreement allowing normal immigration procedures to be resumed.

The Order here, by contrast, is not a response to the acts of the foreign sovereigns, or an effort to insist upon reciprocity from a foreign government

with respect to bilateral immigration policy. Nor does the Order indicate that it may no longer be effective if a foreign sovereign meets certain conditions (*i.e.*, resuming normal migration procedures), as the Order's entry suspension expires after a fixed period. *See* Order § 2(c) ("90 days from the effective date").

President Reagan's Executive Order made no assumptions about the inherent dangerousness of applicants from Cuba, and hence engaged in no discriminatory treatment, by suspending entry of Cuba's citizens until the Cuban government resumed normal migration procedures, including admitting U.S. citizens. By contrast, the Order here uses nationality as a proxy for perceived individual dangerousness—it assumes that because an individual is a citizen of a covered nation, he is inherently more dangerous than a citizen of a non-covered nation. That assumption—the branding of an individual based *solely* upon perceived traits of the biological, ethnic, national, or religious group to which that individual belongs—is the essence of discrimination under our Constitution. *See Parents Involved in Cmty. Sch.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 741–46 (2007) (plurality op. of Roberts, C.J.). It is a rationale that, unlike the Reagan order, goes to the heart of the prohibition against national-origin discrimination found in the INA. *See Legal Assistance for Vietnamese Asylum Seekers* v. *U.S. Dep't of State, Bureau of Consular Affairs*, 45 F.3d 469, 473 (D.C. Cir. 1995).

The Government's assertion, therefore, that the preliminary injunctions issued by the district courts

were "extraordinary"[10] ignores that the injunctions responded to an Order that is itself extraordinary. None of the Executive actions cited by the Government,[11] nor any others known to amici, invoked Section 1182(f) or Section 1185(a)(1) to suspend entry from one or more countries based on the assumption that nationals from those countries were inherently dangerous.

Our history counsels against resorting to discriminatory assumptions, rather than individual considerations, as the basis of immigration policy. National-origin discrimination displaces particularized individual determinations where they are most needed in federal immigration policy. Departing from the carefully crafted threat identification framework in our immigration system, and forcing nationality-based prejudices into its foundation, will "result in, or at least impose a high risk of, inquiries and categories dependent upon demeaning stereotypes, classifications of questionable constitutionality on their own terms." *Schuette* v. *BAMN*, 134 S. Ct. 1623, 1635 (2014) (plurality op. of Kennedy, J.); *accord Peña-Rodriguez* v. *Colorado*, 137

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[10] Br. for Appellants at 1, *Int'l Refugee Assistance Proj.* v. *Trump*, No. 17-1351 (4th Cir. Mar. 24, 2017) (ECF No. 36); Br. for Appellants at 2, *Hawaii* v. *Trump*, No. 17-15589 (9th Cir. Apr. 7, 2017) (ECF No. 23).

[11] The remaining examples cited by the Government involved suspending entry of "members and officials of particular foreign governments," which were based not on nationality but rather on agency (*i.e.*, a foreign power's designation of certain individuals as members of its government) and voluntary association as a government official. Pet. Br. at 53 (citing Proc. No. 6958, 61 Fed. Reg. 60,007 (Nov. 26, 1996); Proc. No. 5887, 53 Fed. Reg. 43,185 (Oct. 26, 1988)).

S. Ct. 855, 867 (2017) (majority op. of Kennedy, J.) (impeaching a jury verdict infected with racial bias and stating that "[i]t must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons"); *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971) ("[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.") (footnote calls omitted). The Order's central tenet—that our existing vetting procedures are inadequate on the whole, but must be suspended *only* as-applied to persons hailing from the six targeted nations on the basis of a presumed risk of terrorism—improperly jettisons the thorough and individualized assessment of visa applicants that is fundamental to our immigration laws and their enforcement.

* * *

CONCLUSION

Amici respectfully urge this Court to affirm the judgments of the courts of appeals.

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APPENDIX[12]

Date & President	Nature of Exclusion
2016, Apr. 21 – Obama Executive Order 13726, 81 Fed. Reg. 23559	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Libya" in specified ways (e.g., engaging in "actions or policies that threaten the peace, security, or stability" of that country or may lead to or result in the misappropriation of Libyan state assets)
2016, Mar. 18 – Obama Executive Order 13722, 81 Fed. Reg. 14943	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving North Korea (e.g., selling or purchasing metal, graphite, coal, or software directly or indirectly to or from North Korea, or to persons acting for or on behalf of the North Korean government or the Workers' Party of Korea)
2015, Nov. 25 – Obama Executive Order 13712, 80 Fed. Reg. 73633	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Burundi" in specified ways (e.g., engaging in "actions or policies that threaten the peace, security, or stability of Burundi," or "undermine democratic processes or institutions" in that country)

[12] Reproduced in substance from Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* at 6–10 tbl.1, Cong. Res. Serv. (Jan. 23, 2017).

2015, Apr. 2 – Obama Executive Order 13694, 80 Fed. Reg. 18077 (later amended by Executive Order 13757, 82 Fed. Reg. 1 (Jan. 3, 2017))	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in "significant malicious cyber-enabled activities" (e.g., harming or significantly compromising the provision of services by a computer or computer network that supports an entity in a critical infrastructure sector)
2015, Mar. 11 – Obama Executive Order 13692, 80 Fed. Reg. 12747	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Venezuela" in specified ways (e.g., engaging in actions or policies that undermine democratic processes or institutions, significant acts of violence or conduct that constitutes a serious abuse or violation of human rights)
2015, Jan. 6 – Obama Executive Order 13687, 80 Fed. Reg. 819	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens with specified connections to North Korea (e.g., officials of the North Korean government or the Workers' Party of Korea)
2014, Dec. 24 – Obama Executive Order 13685, 79 Fed. Reg. 77357	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving the Crimea region of Ukraine (e.g., materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, persons whose property or interests are blocked pursuant to the order)

2014, May 15 – Obama Executive Order 13667, 79 Fed. Reg. 28387	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the conflict in the Central African Republic in specified ways (e.g., engaging in actions or policies that threaten the peace, security, or stability of that country, or that threaten transitional agreements or the political transition process)
2014, Apr. 7 – Obama Executive Order 13664, 79 Fed. Reg. 19283	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to South Sudan (e.g., actions or policies that "have the purpose or effect of expanding or extending the conflict" in that country, or obstructing reconciliation or peace talks or processes)
2014, Mar. 24 – Obama Executive Order 13662, 79 Fed. Reg. 16169	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the situation in Ukraine in specified ways (e.g., operating in the financial services, energy, metals and mining, engineering, or defense and related materiel sectors of the Russian Federation economy)
2014, Mar. 19 – Obama Executive Order 13661, 79 Fed. Reg. 15535	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., officials of the government of the Russian Federation, or persons who operate in the arms or related materiel sector)

2014, Mar. 10 – Obama Executive Order 13660, 79 Fed. Reg. 13493	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., engagement in or responsibility for misappropriation of state assets of Ukraine or of economically significant entities in that country)
2013, June 5 – Obama Executive Order 13645, 78 Fed. Reg. 33945	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who have engaged in certain conduct related to Iran (e.g., materially assisting, sponsoring, or providing support for, or goods or services to or in support of, any Iranian person included on the list of Specially Designated Nationals and Blocked Persons)
2012, Oct. 12 – Obama Executive Order 13628, 77 Fed. Reg. 62139	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain actions involving Iran (e.g., knowingly transferring or facilitating the transfer of goods or technologies to Iran, to entities organized under Iranian law or subject to Iranian jurisdiction, or to Iranian nationals, that are likely to be used by the Iranian government to commit serious human rights abuses against the Iranian people)
2012, July 13 – Obama Executive Order 13619, 77 Fed. Reg. 41243	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to threaten the peace, security, or stability of Burma in specified ways (e.g., participation in the commission of human rights abuses, or importing or exporting arms or related materiel to or from North Korea)

2012, May 3 – Obama Executive Order 13608, 77 Fed. Reg. 26409	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to Iran and Syria (e.g., facilitating deceptive transactions for or on behalf of any person subject to U.S. sanctions concerning Iran and Syria)
2012, Apr. 24 – Obama Executive Order 13606, 77 Fed. Reg. 24571	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have engaged in specified conduct involving "grave human rights abuses by the governments of Iran and Syria via information technology" (e.g., operating or directing the operation of communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist or enable serious human rights abuses by or on behalf of these governments)
2011, Aug. 9 – Obama Proclamation 8697, 76 Fed. Reg. 49277	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who participate in serious human rights and humanitarian law violations and other abuses (e.g., planning, ordering, assisting, aiding and abetting, committing, or otherwise participating in "widespread or systemic violence against any civilian population" based, in whole or in part, on race, color, descent, sex, disability, language, religion, ethnicity, birth, political opinion, national origin, membership in a particular social group, membership in an indigenous group, or sexual orientation or gender identity)

2011, July 27 – Obama Proclamation 8693, 76 Fed. Reg. 44751	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens subject to U.N. Security Council travel bans and International Emergency Economic Powers Act sanctions
2009, Jan. 22 – Bush Proclamation 8342, 74 Fed. Reg. 4093	Suspending the entry into the United States, as immigrants or nonimmigrants, of foreign government officials responsible for failing to combat trafficking in persons
2007, July 3 – Bush Proclamation 8158, 72 Fed. Reg. 36587	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten Lebanon's sovereignty and democracy (e.g., current or former Lebanese government officials and private persons who "deliberately undermine or harm Lebanon's sovereignty")
2006, May 16 – Bush Proclamation 8015, 71 Fed. Reg. 28541	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten the transition to democracy in Belarus (e.g., Members of the government of Alyaksandr Lukashenka and other persons involved in policies or actions that "undermine or injure democratic institutions or impede the transition to democracy in Belarus")
2004, Jan. 14 – Bush Proclamation 7750, 69 Fed. Reg. 2287	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who have engaged in or benefitted from corruption in specified ways (e.g., current or former public officials whose solicitation or acceptance of articles of monetary value or other benefits has or had "serious adverse effects on the national interests of the United States")

2002, Feb. 26 – Bush Proclamation 7524, 67 Fed. Reg. 8857	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten Zimbabwe's democratic institutions and transition to a multi-party democracy (e.g., Senior members of the government of Robert Mugabe, persons who through their business dealings with Zimbabwe government officials derive significant financial benefit from policies that undermine or injure Zimbabwe's democratic institutions)
2001, June 29 – Bush Proclamation 7452, 66 Fed. Reg. 34775	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten international stabilization efforts in the Western Balkans, or are responsible for wartime atrocities in that region
2000, Oct. 13 – Clinton Proclamation 7359, 65 Fed. Reg. 60831	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who plan, engage in, or benefit from activities that support the Revolutionary United Front or otherwise impede the peace process in Sierra Leone
1999, Nov. 17 – Clinton Proclamation 7249, 64 Fed. Reg. 62561	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens responsible for repression of the civilian population in Kosovo or policies that obstruct democracy in the Federal Republic of Yugoslavia (FRY) or otherwise lend support to the government of the FRY and the Republic of Serbia
1998, Jan. 16 – Clinton Proclamation 7062, 63 Fed. Reg. 2871	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the military junta in Sierra Leone and their family

1997, Dec. 16 – Clinton Proclamation 7060, 62 Fed. Reg. 65987	Suspending the entry into the United States, as immigrants or nonimmigrants, of senior officials of the National Union for the Total Independence of Angola (UNITA) and adult members of their immediate families
1996, Nov. 26 – Clinton Proclamation 6958, 61 Fed. Reg. 60007	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the government of Sudan, officials of that country, and members of the Sudanese armed forces
1996, Oct. 7 – Clinton Proclamation 6925, 61 Fed. Reg. 52233	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who "formulate, implement, or benefit from policies that impede Burma's transition to democracy" and their immediate family members
1994, Oct. 27 – Clinton Proclamation 6749, 59 Fed. Reg. 54117	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain aliens described in U.N. Security Council Resolution 942 (e.g., officers of the Bosnian Serb military and paramilitary forces and those acting on their behalf, or persons found to have provided financial, material, logistical, military, or other tangible support to Bosnian Serb forces in violation of relevant U.S. Security Council resolutions)
1994, Oct. 5 – Clinton Proclamation 6730, 59 Fed. Reg. 50683	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Liberia's transition to democracy and their immediate family

1994, May 10 – Clinton Proclamation 6685, 59 Fed. Reg. 24337	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens described in U.N. Security Council Resolution 917 (e.g., officers of the Haitian military, including the police, and their immediate families; major participants in the 1991 Haitian coup d'etat)
1993, Dec. 14 – Clinton Proclamation 6636, 58 Fed. Reg. 65525	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Nigeria's transition to democracy and their immediate family
1993, June 23 – Clinton Proclamation 6574, 58 Fed. Reg. 34209	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate or benefit from policies that impede Zaire's transition to democracy and their immediate family
1993, June 7 – Clinton Proclamation 6569, 58 Fed. Reg. 31897	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate, implement, or benefit from policies that impede the progress of negotiations to restore a constitutional government to Haiti and their immediate family
1992, June 1 – Bush Executive Order 12807, 57 Fed. Reg. 23133	Making provisions to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any covered vessel carrying such aliens
1988, Oct. 26 – Reagan Proclamation 5887, 53 Fed. Reg. 43184	Suspending the entry of specified Nicaraguan nationals into the United States as nonimmigrants (e.g., officers of the Nicaraguan government or the Sandinista National Liberation Front holding diplomatic or official passports)

1988, June 14 – Reagan Proclamation 5829, 53 Fed. Reg. 22289	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain Panamanian nationals who formulate or implement the policies Manuel Antonio Noriega and Manuel Solis Palma, and their immediate families
1986, Aug. 26 – Reagan Proclamation 5517, 51 Fed. Reg. 30470	Suspending the entry of Cuban nationals as immigrants with certain specified exceptions (e.g., Cuban nationals applying for admission as immediate relatives under INA § 201(b))
1985, Oct. 10 – Reagan Proclamation 5377, 50 Fed. Reg. 41329	Suspending the entry of specified classes of Cuban nationals as nonimmigrants (e.g., officers or employees of the Cuban government or the Communist Party of Cuba holding diplomatic or official passports)
1981, Oct. 1 – Reagan Proclamation 4865, 46 Fed. Reg. 48107	Suspending the entry of undocumented aliens from the high seas, and directing the interdiction of certain vessels carrying such aliens